IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4578 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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LOK ADHIKAR SANGH

Versus

STATE OF GUJARAT

Appearance:

Mr. Girish Patel, Sr. Advocate for petitioner
Mr. A.D. Oza Government Pleader for Respondent No.1,4 & 5
Mr. Amit Panchal for respondent No.2 & 3
Mr. K.B. Pujara for respondent No.6
Mr. DN Patel for respondent No.7

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.A.MEHTA

Date of judgment : 02/07/2001

C.A.V. JUDGMENT (Per B.C. Patel, J.)

1. This petition was filed as a Public Interest Litigation as fire safety system was not provided to prevent accidents in cinema halls, factories and high rise buildings. The petitioner sought for several directions including to take action against erring officers, who are responsible for gross violation of rules and regulations and to direct the respondents to create an independent machinery as also for mandatory agency representing various sections of the people to monitor working of the fire safety measures. Initially the Division bench (Coram: R.A. Mehta, Actg. C.J. & N.N. Mathur, J.) issued notice on 1.7.1997, returnable on 21.7.1997. Thereafter, on 4.9.1997, the Court (Coram: R.A. Mehta, Actg. C.J. & N.N. Mathur, J.) considered the affidavit in reply filed by the respondent admitting the fact that there are large number of high-rise buildings within the municipal limits, which are said to be without the required fire safety and fire prevention equipments. This being contrary to the law, prejudicial to the safety of the public at large and considering the fact that violation was on a large scale, the Court passed an order, further pointing out that because the buildings are built and put up by big builders and occupied by well-to-do influential people, actions are not taken or a show is made that actions are taken. The Court, in the aforesaid order dated 4.9.1997, gave an opportunity to the authorities to "disprove that the allegation of the petitioners that they (i.e. the authorities) are in collusion with the builders and occupiers of such buildings", and the matter was adjourned to 22.9.1997. Thereafter, it was brought to the notice of the Court that under the guise of a resolution No. 28.4.1994 for providing water and drainage facilities to hutments, chawls, societies, row houses and other buildings constructed without permission or illegally between 1.5.1976 and 31.3.1994, AMC was granting drainage and water connection to high rise buildings without fire safety measures. The Court (Coram: R.A. Mehta, Actg. C.J. and S.D. Pandit, J.) therefore granted permission on 16.10.1997 to amend the petition, and the petition is accordingly amended (pages No. 31 to 34). It was contended in the draft amendment that the said resolution cannot be used to condone the gross violations by the builders/ occupiers of buildings rules and regulations and of fire safety measures.

2. Thereafter, the Court (Coram: K. Sreedharan, C.J. & M.S. Shah, J) in an order dated 24.12.1997 pointedly referred to the order dated 4.9.1997 and we do not repeat the same. The Court also pointed out that it is improper to apply the aforesaid resolution to high rise buildings. The Court directed to take appropriate steps to get fire safety and fire prevention measures, including installation of such equipments in the high rise buildings in accordance with law. Despite the fact that the order is dated 24.12.1997, no action has been taken so as to satisfy the Court that Municipal Commissioner has taken action against the wrong doers who have committed breaches of various provisions. He has not taken action despite the fact that on 18.2.1999, the State Government has forwarded circulars to all Municipal Corporations, Municipalities and Chairmen of various Urban Development Authorities in this behalf. (Copy of the said resolution is produced by Dr. Manjula Subramaniam, Principal Secretary with her affidavit-in-reply). Even thereafter, the State Government issued letter to the Municipal Commissioner as well as Urban Development Authorities to take action against the officers who have acted illegally.

3. Thereafter, the matter was placed before the Division Bench (Coram: K.Sreedharan, C.J. & A.R. Dave, J) on 12.2.1998. Reading the order it is clear that the Municipal Corporation issued Public Notice requiring high rise buildings situated within Municipal Corporation limits to have fire safety equipments and devices installed within sixty days, and the said period was to expire on 14.3.1998.

Thus, though breach was committed by officers of the Corporation, Public Notice was given and public at large was informed that in every high rise building, there must be fire safety equipment and devices within the time granted. As that was not done, the Court was required to proceed further. Not only that, but the Municipal Commissioner requested the Court in public interest to direct that such systems (fire prevention and protection system for high rise buildings) if not already installed, be installed in the high rise buildings forthwith and the same be made operational and effective. This speaks a lot about the affairs of the Municipal Corporation. The Municipal Commissioner was not able to control his staff or the Municipal Commissioner at the relevant time, was not able to enforce the law. Otherwise he would not have permitted anyone to occupy the buildings unless and until the same is erected in accordance with law and that Building Use Permission is

granted. The Division Bench in the aforesaid order dated 12.2.1998 directed the Municipal Commissioner and his team of officers to follow the time schedule fixed in the notices and see that fire safety measures are installed in all the buildings without fail. The Court further directed that "in case any building fails to have these safety measures, all legal steps, contemplated by the various Acts and Rules, should be pressed into service, and effective action should be taken against erring builders / owners".

4. Thereafter the matter came up for hearing before the Division Bench (Coram: C.K. Thakkar & K.M. Mehta, JJ.) and by an order dated 17.2.2000, the Court issued rule and heard the parties on interim relief. On perusal of the record and earlier orders passed in the matter, the Court was satisfied that interim order was required to be passed and, therefore, issued directions with regard to high rise buildings. The Court gave the following directions with regard to high rise buildings:

"(A). High Rise Buildings:

(i). Construction of buildings: So far as construction of high-rise buildings is concerned, it is directed that Ahmedabad Municipal Corporation (AMC) and/or Ahmedabad Urban Development Authority (AUDA) will bring to the notice of owners / builders / contractors / developers regarding fire protective system and installment of fire safety measures. For ensuring compliance of such requirements, the authorities shall carry out periodical inspection of such buildings with a view to confirm that all steps required to be taken under the relevant laws have been taken by the owners / builders / contractors / developers, etc.

(ii). Existing but unoccupied buildings: In respect of high-rise buildings which are existing but still not occupied, the authorities shall not grant NOC or occupation certificates unless and until sufficient fire protective system is installed and made operational by them. The authorities shall strictly enforce the provisions relating to fire protective system before granting occupation certificate.

(iii). Existing and occupied buildings: Regarding high rise buildings which are constructed as well as occupied, the authorities shall issue notices to the owners / builders /

contractors / developers / occupiers etc. asking them to show cause why actions in accordance with law should not be taken against them and remedial measures should not be carried out. The authorities shall prepare necessary time table for such remedial measures with a view to avoid exercise of power to evict occupiers of such high rise buildings.

5. It is surprising to note that Municipal Commissioner as well as Chairman of AUDA have not only committed breach of the order passed by the Honourable Court but though they were warned that the buildings which were not occupied on that date should not be permitted to be occupied unless and until sufficient fire protective system is installed and made operational, they have permitted the builders / developers / contractors to see that the buildings are occupied. If these authorities would not have given drainage, and water connection, the buildings could not have been occupied. Unless and until they have connived, occupancy was out of question in a building where no B.U. Permission was granted. Even with regard to the buildings which were occupied, direction was given. Reading the order, it is clear that remedial measures were required to be taken with a view to avoid exercise of powers to evict the occupiers of such high rise buildings. It appears that no remedial measures have been taken. Neither the Municipal Commissioner nor the Chairman of AUDA has taken any satisfactory action, except giving notices. The authorities were aware about the law and the order passed by the Division Bench. They have got a battery of law officers. The law makes a provisions for prosecution of builders and/or occupiers in relevant statutes. The order passed by the Court on 17.2.2000 has not been complied with. It is required to be noted that directions are given only to comply with the provisions made by the legislature and that too in the interest of public at large. The directions were in the interest of public interest and public safety.

6. As the directions contained in the order passed by the Court on 17.2.2000 were not complied with, the Division Bench (Coram: B.C. Patel & P.B. Majmudar, JJ.) passed an order on 25.7.2000, after referring to the earlier orders and also the facts narrated in C.A. No. 6069/99 indicating a major fire, which broke out on the 7th floor of Shree Krishna Complex near Mithakhali six Roads. The Court pointed out that on 14.1.1998, 20.1.1998, 21.1.1998 public notices were issued, the copies of which were placed on record, by which the

attention of all builders / developers / structural engineers / architects / owners / Chairpersons and Secretaries of the buildings and Building Residents' Association of high rise buildings was invited and they were cautioned about the consequences of not providing fire safety measures. The order is in detail, and we need not repeat the same. The then Municipal Commissioner Mr. Sinha pointed out that scant respect has been paid to the provisions of Bombay Provincial Municipal Corporation Act, 1949 and byelaws framed thereunder by the builders, owners of the buildings, occupiers, and all concerned with the construction of these buildings. The Court pointed out several aspects which we are not repeating here. Considering the facts and circumstances and the relevant material placed on the record, the Court directed to issue public notice once again informing the public at large occupying high rise buildings to provide fire safety measures within a period of four weeks from the date of publication. Even before this public notice, notices were given. Directions were given to the Municipal Commissioner to write to the Ahmedabad Electricity Company to disconnect electric supply if within the period fire safety measures were not provided. The Corporation and AUDA were directed not to supply any essential services to any building unless and until the building is erected in accordance with law and BU Permission is granted by the competent authority. Ahmedabad Electricity Company was also directed not to provide electricity without BU Permission. It is required to be noted that this direction applies to all 'buildings'. As stated in the order, the Court considered the submissions made on behalf of the Corporation with regard to the powers of the Municipal Commissioner to provide water connection etc. where the owner is not willing to do so. The Court pointed out that in a case where a building was erected in accordance with law, that is: plans were submitted in accordance with law, permission for construction was granted in accordance with law, the construction was completed in accordance with law and thereafter BU Permission was granted in accordance with law and thereafter if the owner of the building was acting in such a way that the tenants or other residents were not getting the essential supplies, then, in such a case, the Commissioner, if approached, was required to decide the matter in view of Section 185-A but certainly he cannot grant permission to occupiers occupying a building, which is erected not in accordance with law and byelaws. It was further pointed out in the order that :

"if the builder or a person interested in newly

constructed building intends to pass on the building not erected in accordance with law to others, it is the duty of the Commissioner to intervene and to see that such building is not allowed to be used and he can object before the court when an application is moved before the court for use of a building. It is the duty of the court to satisfy on the basis of record placed by the Municipal Corporation whether building is erected as per regulations, F.S.I. etc. or not. If the Court is permitting the persons to use the building which is erected in contravention of laws, then on account of not providing fire safety measures, who would be responsible to life of persons in case of fire? In such case, say for example, even undertaking is given to the Court to provide within a period of one month all fire safety measures, and, the Court permits the use of a building. Unfortunately, in the second week, on account of outbreak of a fire, human lives are lost, who will be responsible."

7. Thus, before the Court, arguments were not restricted to only high rise buildings but arguments were advanced for buildings constructed without permission or illegally. As stated by us the foregoing paragraphs, AMC passed a resolution to the effect that all the buildings shall be continued to be supplied with water supply and drainage facilities as per the guidelines enumerated in the resolution. We are of the view that any resolution passed by any body, which is contrary to the provisions of law, is not to be enforced by the authorities and the authorities are required to enforce the law strictly. We are also of the opinion that buildings irrespective of its size or area must be erected with prior permission of the competent authority, viz. the Municipal Commissioner or AUDA, as the case may be, and persons should be allowed to occupy buildings only after Building Use Permission is granted. It is not for the Court to relax the provisions of law which are made by the legislature. Definition clause (5) of section 2 of BPMC Act indicates what is a building, as under:

"(5). 'building' includes a house, out-house, stable, shed, hut and other enclosure of structure whether of masonry, bricks, wood, mud, metal or any other material whatever, whether used as a human dwelling or otherwise, and also includes verandahs, fixed platforms, plinths, doorstemps, walls, including compound walls and

fencing and the like."

8. Chapter XV refers to Buildings Regulations. Section 253 says that every person who intends to "erect a 'building'" shall give to the commissioner notice of the said intention in the form prescribed in the bylaws and containing all such information as may be required to be furnished under the by-laws. Thus, it refers to 'building' and not to only 'high rise building'. It thus clearly appears that chapter XV of the BPMC Act pertains to all types of 'buildings' and is not restricted to high rise buildings only. One has to read the law as it is. Therefore, if any 'building' within the meaning of the BPMC Act has to be erected , it must be in conformity with Chapter XV.

9. Similarly, definition of the word 'residence' is given in sub-section (xxiv) of Section 2 of the Gujarat Town Planning & Urban Development Act, 1979 (hereinafter referred to as the Development Act), which reads as under:

(xxiv) "residence" includes the use for human habitation of any land or building or part thereof, the use of gardens, grounds, garages, stables and out-houses, if any, appertaining to such land or building, and the expression "residential" shall be construed accordingly."

That also requires permission from the competent authority to erect or occupy. Thus, the legislature has made it clear that any 'building' which is used for the purpose of occupying as human habitation, must be in accordance with law. Sub-clause (viii) of section 2 of the Development Act refers to' development', which reads as under:

(viii). "development' with all its grammatical variations and cognate expressions, means the carrying out of any building, engineering, mining, or other operations in, or over, or under land or the making of any material change in any building or land or in the use of any building or land, and includes layout and sub-division of any land."

10. . The word 'building' is not defined in the Development Act. Therefore, one has to take the meaning from another source, if contrary intention is not appearing in making the provision. 'Building' as referred to in the Random house Dictionary of English language, says what 'building' is, as under:

(1). A relatively permanent essentially box like construction having a roof and often windows and enclosing within its walls space, usually on more than one level, for any of a wide variety of activities, as living, entertaining, manufacturing etc.

(2). Anything built or constructed;

(3). The act, business or practice of constructing houses, office buildings, etc.

11. Thus, it is clear that a place made for any activity by the human being under a roof, whatever the nature of it may be, is a 'building' and that must be erected in accordance with law. Reading the order as a whole and the provisions of law, it is clear that it applies to "all buildings".

12. Reading the directions contained in the order, it is clear that Chairman of AUDA and Commissioner of the Ahmedabad Municipal Corporation were required to carry out the order. That order was made in view of the provisions made by the legislature and earlier orders passed by the Court.

13. Court cannot encourage illegal activities but it would issue directions strictly in accordance with law. Unauthorised construction, may be a small house, a bungalow or a chawl, a slum or a high rise building, but in view of the meaning of the word 'building', there cannot be different treatment. All constructions / buildings must be erected in accordance with law and Building Use Permission is a must for use of the building. No authorities can act contrary to law. Therefore, directions issued earlier on 25.7.2000 must be complied with, with regard to all types of buildings.

14. The Apex Court in the case of ALMITRA H. PATEL & ANR. Vs. UNION OF INDIA & ANR. Reported in (2000) 2 SCC 679 made the following observations, keeping in view the social needs:

"Establishment or creating of slums, it seems, appears to be good business and is well organised. The number of slums has multiplied in the last few years by geometrical proportion. Large areas of public land, in this way, are usurped for private use free of cost. It is difficult to believe that this can happen in the capital of the country without passive or active connivance of the land-owning agencies and/or the

> municipal authorities. The promise of free land, at the taxpayers' cost, in place of a jhuggi, is a proposal which attracts more land-grabbers. Rewarding an encroacher on public land with a free alternative site is like giving a reward to a pickpocket. The Department of Slum Clearance does not seem to have cleared any slum despite its being in existence for decades. In fact more and more slums are coming into existence. Instead of 'slum clearance' there is 'slum creation' in Delhi. This in turn gives rise to domestic waste being strewn on open land in and around the slums. This can best be controlled at least, in the first instance, by preventing the growth of slums. The authorities must realise that there is a limit to which the population of a city can be increased, without enlarging its size. In other words, the density of population per square kilometer cannot be allowed to increase beyond the sustainable limit. Creation of slums resulting in increase in density has to be prevented. What the Slum Clearance Department has to show, however, does not seem to be visible. It is the garbage and solid waste generated by these slums which require to be dealt with most expeditiously and on the basis of priority."

The aforesaid observations made by the Apex Court applies to the city of Ahmedabad also.

15. In Special Civil Application No. 3426 of 1998 filed by Peoples Union for Civil Liberties vs. State of Gujarat, a Division Bench of this Court (Coram: D.M. Dharmadhikari, CJ & B.C. Patel, J.) held as under:

> "In granting, therefore, relief to homeless in cities and those compelled by circumstances and poverty to encroach on land for living in huts, a word of caution given by the Supreme Court in the case of Navabkhan (supra) and Almitra (supra) have to be taken note of, lest such recognition of right of hutment dwellers to live would indirectly encourage encroachments by land grabbers who are part of land mafia operating in cities in the name of poor and needy."

16. Therefore, it is absolutely necessary to follow the provisions of law with a view to see that slumlords and land mafias are not expanding their activities and are not allowed to exploit the poor class and are not

allowed to be benefited at the cost of people. The court in the aforesaid case has issued directions to the State to provide land to poor class and that direction was issued with a view to ensure the safety and convenience of the poor class.

17. The order dated 25.7.2000 passed in Spl. C.A. No. 4578/97 by the Division Bench was the subject matter of Special Leave to Appeal (Civil) No. 5421 and 5422 of 2000 before the Apex Court. When the matter came up before the Supreme Court (Coram: D.P. Mohapatra & Mrs. Ruma Pal, JJ.), learned advocate for the petitioners sought leave of the Court to withdraw the petitions saying that the petitioner will approach the High Court for redressal of its grievances, if any. The SLP was accordingly dismissed as withdrawn. SLPs being SLP No. 3648-3649/20001 were also filed before the Apex Court against the same order dated 25.7.2000. That matter came up before the Supreme Court (Coram: B.N. Kirpal & Ms. Ruma Pal, JJ). The Apex Court passed the following order:

"Permission is granted to file SLPs. Delay condoned. We find no infirmity in the judgment of the High Court. The Special Leave Petitions are dismissed. However, if the petitioner wants any clarification, it is open to the petitioners to approach the High Court. " Thus, the Apex Court dismissed the petitions on merits.

18. The present petition again came up before the Division Bench (B.C. Patel & R.R. Tripathi, JJ). The said Bench, in its order dated 13.11.2000 again reproduced the previous orders passed by the Court on various occasions. In paragraph 8 of the order dated 13.11.2000, the Division bench observed as under: .

"Thus, it is clear that the buildings which were not occupied on the date on which the Court passed an order could not have been occupied without building use permission being granted. Under the circumstances, we direct Ahmedabad Municipal Corporation and Ahmedabad Urban Development Authority to place material on record as to how many buildings were constructed and not occupied, and how many buildings were under construction as on 17.2.2000. They are also directed to place on record whether such buildings are occupied or not after the order was passed on 17.2.2000. Such report shall be placed on record with affidavit within 2 weeks."

19. In paragraph 9, the Court pointed out about the public notice issued by AMC and AUDA . On behalf of AMC It was also stated that even individual notices were given but so far as AUDA is concerned, it was stated that individual notices were given to the chairman/Secretary of the Societies / non trading Corporation. Not only that, Dr. Manjula Subramaniam, Principal Secretary filed an affidavit pointing out that the Government has issued various directions to AMC and AUDA. Copies of circular were also placed on 18.2.1999. It was pointed out that letters were addressed to the Municipal Commissioner. The Court observed in paragraph 10 of the order dated 13.11.2000 that reading the circular it becomes very clear that all the Urban Development Authorities and all the Corporations in the State of Gujarat were directed to see that high rise buildings in the respective areas are provided with fire safety measures. The Court further observed that the circulars made it very clear that the development control regulation, building by-laws and National Building code are to be properly implemented. The State, in that order, was directed to place on record the details regarding action taken against the erring officers for not providing fire safety measures. In the aforesaid order dated 13.11.2000 it is also observed that the Court while hearing SCA No. 9274 of 2000 made an order pointing out the lethargy on the part of the authorities in implementing the law. The order makes it clear that the Chairman, AUDA clearly admitted before the Court that he has not taken action or given instructions for implementation of the provisions for fire safety. Dr. Manjula Subramaniam was requested by the Court to submit a report. She has taken into consideration the material placed before her. From her conclusions, it is clear that AUDA is accepting the responsibility for nonimplementation of the provisions of the Development Act. She has further stated that the default appears to be more due to negligence rather than due to connivance. She has also opined that "There is no evidence to suggest connivance as presently advised. The same appears to be the position in respect of the officers". She has also pointed out about non-compliance by Architects and Engineers. In paragraph 13 of the order, the Court pointed out that during the tenure of the present Chairman, at least 135 buildings were permitted to be erected and occupied without BU Permission and without adequate fire safety measures. Shri B.K. Sinha also brought to the notice of the present Chairman about the defaults. Ultimately, in that order, the Court ordered to issue notice against the present Chairman returnable

on 20.11.2000 to show cause as to why appropriate orders should not be passed on the basis of the report submitted by Dr. Manjula Subramaniam, Principal Secretary.

20. It is a sorry state of affairs that though Dr. Manjula Subramaniam has submitted her report on 4.11.2000, no effective steps have been taken by the Chairman, AUDA to see that fire safety measures are provided in high rise buildings. It is surprising that the counsel appearing for ADUA stated that to majority of the buildings BU Permission is not granted. This means that AUDA is not taking any care to see that the provisions of law are enforced. As there was non-compliance, the Court, on 12.4.2001 again issued notice to the Chief Secretary being the responsible officer of the State Government, for placing an explanation. The State Government has issued circulars to these officers for ensuring fire safety systems. These officers have not taken any concrete action to see that fire safety system is provided despite the fact that since 1997 it was made known to them that installation of fire safety systems in high rise buildings is a legal requirement and as stated above, the Division Bench also passed an order to the effect that it is for these authorities to disprove the allegation that they are in collusion with the builders. It seems that the State was satisfied by mere issuance of circulars only. The Municipal Commissioner as well as the Chairman of ADUA were also called upon to render explanation before the Court on 26th April 2001. In the aforesaid order, the Court also pointed out that provisions contained in section 263 of the BPMC Act and the order made by the Division Bench in SCA No. 8931/2000 pointing out that it is the duty of the officers of the Corporation not to supply essential services such as drainage and water connection so as to see that the building is not put to use. Sections 159 and 161 of the BPMC Act makes it very clear that without permission of the Municipal Commissioner, connections with municipal drains is not permissible and owners and occupiers of the buildings are not entitled to cause its drain to empty into the municipal drain. The Builders / Developers were allowed to use the drainage without payment as a result the Corporation, public at large is the sufferer. Public exchequer is deprived of that amount. In C.A. No. 5337 of 2001 in Spl.C.A. No.9973 of 2000 filed by Ganesh Plaza Office Owners' Association vs. Perfect Constructions Pvt. Ltd. & Ors where drainage was connected with the municipal drains without permission, considering the loss of interest and amount required to be paid, the Builder through his counsel volunteered

before the Court that a sum of Rs.1,60,000/- shall be paid to the Municipal Corporation. Thus for one high rise building, its builder volunteered to pay the aforesaid sum for illegal drainage connection. As stated before the Court several high-rise buildings without BU Permission are emptying their drains illegally to the Municipal drains. Considering the number of such buildings, a sum of approximately Rs. 6 Crores is the minimum loss suffered by AMC on this count. AMC is the loser, public at large is the sufferer and the builders / developers are the gainers. The public exchequer has thus suffered a loss of very huge amount. Why people should suffer for negligence and/or connivance of the staff of the Corporation and/or AUDA. However it is the Commissioner and/or Chairman of AUDA who have allowed it for all these years.

21. The Court also pointed out about the Ordinance and the requirement of fire safety measures required to be provided. The Court, in Spl. C.A. No. 9988/95 directed the Municipal Commissioner not to allow the use of the building if not constructed as per the plans approved and also directed that if the construction is not as per the plans approved, he shall take immediate action including the action of not granting BU Permission. However, from the discussion above, it is clear that neither the AUDA nor the Municipal Corporation has bothered to implement the orders passed by the Court and to take action in accordance with the provisions made by the legislature. It is a sorry state of affairs that these two authorities under the garb of public service are found misusing the powers and permitted others to act in breach of the provisions of law. It was their duty to act in accordance with law. It was also their duty to see that the provisions which are made by the legislature and/or the rules are strictly implemented but they have not taken action to follow the provisions, and on the contrary it appears that they have failed in discharging their obligations. Material placed before us clearly reveals that they are acting in collusion with the builders, and they are not able to disprove the allegations made by the petitioner. When this matter was placed before the Court on 3.5.2001, pursuant to the notice issued on 12.4.2001, the Chief Secretary, Municipal Commissioner and the Chairman of AUDA filed their affidavits. After hearing the learned advocates for the respective parties and after considering the affidavits, the Court reserved the order and stated that the orders will be pronounced afterwards and the matters were adjourned to 25th June 2001. The Court was not satisfied with the explanations rendered. No effective

action has been taken so as to satisfy the Court that AMC and AUDA are enforcing the provisions of law and are complying with the directions issued by the Court earlier. Against the wrong doers no legal action has been taken. If these authorities are permitted to act in the way in which they are acting, public at large will suffer. One cannot dig a well after the fire erupts. Similarly, the purpose in providing fire safety measures is to prevent eruption and spread of fire and this needs to be done as a precautionary measure in advance and not after the fire breaks out. The rule making authorities in its wisdom, after considering the reports made by the Committee of experts have emphasized that building regulations must be strictly adhered to. Unfortunately, at the hands of these two authorities, the mandate of the law is not strictly enforced. On the contrary, there is a decision taken by AMC and AUDA to charge fees and to regularize unautorised use and illegal constructions, and that too without fire safety measures. This speaks a lot about the authorities. From this, the only conclusion that can be drawn is that these authorities have acted in collusion with the Builders otherwise, there was no reason for them not to act in accordance with law and not to implement not only the mandate of law but also the directions of the Court.

22. We have taken into consideration the explanation rendered by the AMC, AUDA and the Chief Secretary. We are not satisfied with the explanation. After going through the explanation, we cannot say that these authorities have acted in true spirit so far as implementation of law regarding fire safety measures and taking action against the persons who have violated the provisions of law by not providing fire safety measures in high rise buildings are concerned. It is required to be noted that even in the State Government buildings, no fire safety measures were provided . Was it not the duty of the Chief Secretary to see that the atleast the State acts in accordance with the law? It is a sorry state of affairs that even after bringing this fact to the notice of the State, and even after granting them sufficient opportunities, the State has not provided fire safety measures to its own buildings! Public at large throngs in State buildings everyday for various works and the public at large cannot be left to the mercy of providence in the absence of fire safety systems in government buildings. Earlier, on behalf of the State, application was made. The Court passed an order on 7.8.2000. The officer who filed the affidavit in that matter suggested that the State should prioritize care of finance and not human beings. The Court pointed out that if Government

has constructed high rise buildings, then it is mandatory on the part of the Government to see that fire safety measures are provided. We were surprised to note that buildings including Civil Hospital, Dental College etc where hundreds of patients and their relatives remain in the buildings round the clock, were not provided with fire safety measures. Assurance was given to the Court that without the constraint of time and finance, fire safety measures shall be provided. Till today, on behalf of the State, nothing is placed on record to indicate that in all Government Buildings either within the Municipal limits or within the AUDA limits are provided with fire safety measures.

23. On 18.9.2000, the Court pointed out that Ahmedabad City has an area covering 189 sq. kms., and looking to the size of the city, high rise buildings are few in number. Inspite of the fact that high rise buildings were not too large in numbers, why AMC and ADUA could not have kept a vigil to ensure that adequate fire safety measures are provided in such buildings, and why AMC and AUDA could not have taken action against the violators? So far as the cost aspect is concerned, we are told that the cost for providing fire safety measures in a high rise building would be approximately Rs.10 lakhs per building. We are also told that, there are about 418 high rise buildings in municipal limits and 221 high rise buildings in AUDA limits. Thus, by not providing fire safety measures, the builders / developers or whoever erected the buildings have pocketed an amount of approximately Rs.63,90,00,000/- and put the occupiers at the mercy of luck. Even considering the fact that certain buildings are provided with fire safety measures and are granted BU Permission, the approximate amount would be Rs.60,00,00,000/-. Was it not the duty of AMC/AUDA to see that the buildings are provided with adequate fire safety measures when the number of buildings was only 418 and 221 respectively? If the figures of high rise buildings in the City were running into several thousands, one can understand the administrative difficulties. Thus it is clear that administrative difficulty is not the real problem. It is in this context that the Court (Coram: R.A. Mehta, Actg. C.J. & and N.N. Mathur, JJ.) has stated as far back as 4.9.1997 that the authorities should disprove the allegations of the petitioner that they are in collusion with the builders and occupiers of such buildings. Till today, AMC has not been able to disprove this allegations to the satisfaction of the Court.

24. So far as AUDA is concerned, reading the

affidavit filed by the Chairman, it appears that he was not concerned about fire safety measures. One cannot act as per his whims and caprice. When a person is holding a key post in a body like AUDA, he has to act in accordance with law. We are sorry to state that despite the fact that even the State Government brought to the notice of the Chairman of AUDA about the requirement of installing fire safety measures in high rise buildings, the Chairman has not tried to implement the same. Though his attention was drawn to the circular, public notice by the authorities in 1998, and though letters were written, he has stated that he has not taken any action to implement the provisions for installation of fire safety measures in the buildings coming within the AUDA area. He has gone to the extent of stating that implementation of fire safety measures on the lines of national building code in the city of Ahmedabad is not possible. The Chairman in his affidavit dated 1.12.2000 has stated about the priorities of work. The priorities indicated by the Chairman in his affidavit includes preparation of revised draft plan for 10 years, implementation of draft development plan and TP Scheme, infrastructure development, installation of drainage lines, environmental development, constructing E.W.S houses. After stating this, in the concluding portion of paragraph 9, the Chairman has stated that:

> "All these above works I have considered in priority and therefore accurate checking of installation of fire safety measures could not have been done effectively".

25. In paragraph 10 of the affidavit, it is stated that while granting permission for construction (which is known as development permission) condition is imposed to the effect that they shall have to install the fire safety measures and certificate to that effect shall have to be obtained from Ahmedabad Municipal Corporation's fire bridge department. In the same paragraph it is stated that AUDA has not given any building use permission to any high rise building which has not installed fire safety measures. In paragraph 12 it is stated that there is no provision under the Development Act or rules as to what can be done by ADUA if fire safety measures are not installed and there is no other provision so as to prevent or completely stop the usage of the premises. In one breath he states in paragraph 3 that his priority is implementation of draft development plan and TP Scheme and in the same breath reading paragraphs 11 and 12 it appears that AUDA, has not taken any action to prevent persons from occupying high rise

buildings without BU Permission and fire safety provisions! One fails to understand what type of 'implementation of development plan and TP Scheme' this is!, If as per the say of AUDA implementation of the development plan and TP Scheme was its priority, ensuring constructions in accordance with the law and preventing disorderly growth is certainly a part of implementation of development plan and TP Scheme, as permitting haphazard construction and its occupation itself is contrary to any 'plan' and 'scheme'. Thus, the shelter sought to be taken of priority of development works for ignoring installation of fire safety measures and not taking action against violators in itself is self-contradictory.

26. In an affidavit dated 3.5.2001, the Commissioner has stated that after going through facts and circumstances of each case, liability of persons will be determined and decision will be taken to file complaint under the provisions of Gujarat Ownership Flats Act 1975 and the rules framed thereunder as also under Penal Code. These provisions and also the provisions contained in BPMC Act are there. However, till today no action is taken. Reading the provisions it is clear that State Legislature has made ample provisions. It was the duty of the Commissioner as well as the Chairman of AUDA in the public interest and convenience of public at large to request the Court to invoke the provisions. This has not been done, though sufficient time was given to take action so that wrong doers, white-collar criminals, can be dealt with in accordance with law. The Commissioner or Chairman of AUDA possesses requisite record with regard to each building, i.e. the builders, developers, organizers, co-operative societies and the occupiers and yet no action is taken. Reading the provisions, it clearly appears that one who has allowed to occupy, has committed an offence.

27. Both are possessing requisite records but are not taking action; This, in our opinion, amounts to dereliction of duties. State legislature has, with a view to see that buildings are erected strictly according to law, made provisions. To set an example if action is taken others will not repeat the said act. But it seems that these two persons have not cared to take action though the provisions for taking action are known to them and have thus in disregard of legislative intent have kept mum and have not taken any action.

28. The details placed on 18.9.2000 and 30.4.2001 are required to be considered for reaching to a conclusion as

to whether action is taken or not for providing fire safety measures.

18/09/2000		30/04/2001
86	Not complete. Inadequate. Not operative.	86
182	Have initiated process i.e. collection of money Inquiries, etc.	182
25	No action taken in the building for fire safety measures.	25
48	Under construction	53
27	Have provided fire safety system	30
50	System under fabrication	42
418		418

29. Reading the figures it is clear that no action has been taken. Figures were collected by end of August or 1st week of September and were placed before the Court. Though a period of more than eight months elapsed, no progress has been shown. The Commissioner has asked for 18 months time. In several matters where parties approached the Court, in most of the matters, actions have been taken within a short period. Thus the Commissioner is not keen to take action under the law. The authorities have permitted others to occupy the buildings though under the law, they were prohibited unless BU Permission was granted.

30. According to AUDA, there are 221 schemes, however, has not stated number of buildings. (In a given scheme there may be one building or two, three, four or five, etc.) As per statement according to AUDA, in 16 schemes, fire safety system is provided. However, Chief Fire Officer, Ahmedabad has not issued certificate in this behalf. Annexure II to the affidavit sworn by Shri Bharat Raval makes it clear that in 39 schemes, works of fire safety measures has not yet begun. In 117 schemes work of erection of fire safety measures has commenced. Likewise the Commissioner, the Chairman of AUDA also stated that within 18 months, fire safety measures will be provided. In the affidavit, Chief Executive Authority has prayed to direct the persons who are responsible for installation of the fire safety measures without giving any details. He has stated that AUDA shall provide the fire safety measures and thereafter shall call upon the person otherwise liable to install fire safety measures to make payment and on failure to pay shall file a suit

to recover the amount. Thus, Chairman refrained from discharging his duties and even did not allow the staff to act as per instructions issued by the State Government and neglected to act in accordance with law. (As per report submitted by Dr. Manjula Subramaniam, Principal Secretary, Urban Housing Development) which makes it clear that no steps have been taken for non implementation of regulation 6.2. AUDA has not insisted for fire safety measures though Mr. B.K. Sinha, the then Municipal Commissioner and the State Government called upon. The Chairman did not give any directions to take action. Chairman AUDA admitted that he has not taken any action or has not given instructions (though letter was placed before him for implementation). It is also required to be noted that the Chairman by circular/letter dated 19.1.1999 permitted illegal construction on making payment. Reading the letter it becomes clear that prior to this, on 8.9.1998, the Chairman had permitted illegal construction. It is this Chairman who has permitted construction over the open space which was required to be kept open but by charging fees and considering the same as projection, he has allowed the construction. It is this Chairman who has permitted parking space to be used for other purposes by taking amount by way of deposit. This circular has been placed on record along with report of Dr, Manjula Subramaniam. Thus it is clear that in utter disregard of the provisions of law made by the legislature, this Chairman instead of taking action against violators has permitted committing of breach by compounding their illegal acts which legislature has not authorized. In almost all cases, amount has been charged and illegalities are permitted. Action of Chairman is contrary to Apex Court's judgment which was delivered in the case of AUDA itself in the case of AUDA vs. S.J. PASAWALA reported in 1993 (1) GLR 655 wherein the Apex Court held that ADUA has no authority to levy fees without there being any express provision. A Division Bench of this Court in its judgment and order dated 4.10.2000 in the case of CONSUMER PROTECTION COUNCIL vs. AHMEDABAD MUNICIPAL CORPORATION in SCA No. 6794/92 examined the question of collecting the amount for regularisation without authority. The Court held that the Commissioner had no authority to collect the amount for regularisation of illegal constructions or even the Corporation had no authority to regularise unauthorised construction by charging amount by merely passing a resolution.

31. From this, the only conclusion that can be drawn is that to benefit the wrong doers, the Chairman has

acted. He has acted arbitrarily as per his whims and caprice to benefit some at the cost of many innocent occupiers who are facing problems of parking their vehicles and nuisance and pollution. In view of the illegal act permitted by Chairman of AUDA, even pedestrians are facing several problems. He could not have waived the provisions pertaining to fire safety measures.

32. In the same fashion, Commissioner of Ahmedabad Municipal Corporation also acted, and that has not been approved by the Court.

33. These two officers have made life of citizens of Ahmedabad risky by not insisting provisions for fire safety measures and by allowing to construct illegally. They have acted in utter defiance of the provisions made by the legislature. Neither the Commissioner nor the Chairman of AUDA took action against any builder, developer, organisor who were responsible for providing fire safety measures. These two authorities were duty bound not to permit anyone to occupy the buildings in view of the breach; yet they have permitted the occupancy. Chairman and the Commissioner indirectly have allowed one lobby to carryout its object without intervention of anyone.

34. AUDA and AMC were directed by an order dated 13.11.2000 to state as to how many buildings were under construction as on 17.2.2000 (the date on which the Division Bench earlier issued directions) and whether such buildings are occupied. We are told that even such under-construction buildings are permitted to be occupied. So far as AMC is concerned, direction was also given much earlier but it has allowed occupancy of the buildings despite the direction.

35. Even direction was given to place on record the details as to how many occupiers have collected money for providing fire safety measures but no details are placed.

36. The present Chairman of AUDA was also Chairman from 11.9.1995 to 17.1.1997 and thereafter from 11.6.1998 till this date he is the Chairman.

37. In the year 1995, 15 high-rise buildings, in the year 1996, 41 high rise buildings, in the year 1997, 26 high rise buildings, in the year 1998, 1999 and 2000, 22, 21 and 11 high rise buildings were granted permission. Out of 152 buildings upto 2000, 135 buildings permissions were granted during the tenure of the present Chairman.

Thus this Chairman, by charging fees illegally, permitted unauthorized construction, use of parking space for other than parking and allowed the use of buildings without fire safety measures. (Figures aforesaid are taken from the report of Dr. Manjula Subramaniam). Report of Dr, Manjula Subramaniam clearly states that so far as high rise buildings are concerned, the power to sanction BU Permission is with the Chairman.

38. While granting permission, a special condition to install fire safety measures as per approved plan is being clearly mentioned in the Development Permission Order and also in all the sanctioned plans. The said decision of approving of Development Plan is taken by Chairman.

39. No notice was issued to the occupants or builders to install fire safety measures before occupying the premises and only after the order made by the High Court on 27.7.2000, notices were issued by AUDA.

40. Chairman has admitted that he was aware of the non-implementation of the fire safety measures. He added that he did not take any action nor had he given any instructions for implementation of the fire safety measures. Despite the letter and circular issued by the State Government in 1998, he admitted that he had not taken action on non-implementation of fire safety measures. Report is clear that non-implementation of fire safety measures is on account of negligence on the part of the Chairman, AUDA, who has accepted the responsibility for non-implementation. (see the report submitted by Dr. Manjula Subramaniam). .

41. The State Government came out with two Ordinances during the pendency of the petition. Reading both the Ordinances, it is absolutely clear that the Government has not dispensed with the requirement of fire safety measures but on the contrary, the Ordinances make the intention of the Government clear that all high rise buildings must have fire safety measures. That apart, the Government has time and again reminded AUDA of the requirement for installation of fire safety measures. In this background, the averment in paragraph 12 of the affidavit of the Chairman of AUDA to the effect that "There is no other provisions so as to prevent or completely stop the usage of the premises and therefore I was not sure whether action of demolition can be taken up ..... for non installation of fire safety measures in high rise building" requires to be deprecated. A person sitting at the helm of the affairs must know what action

can be taken under the law. This statement from the Chairman of AUDA is required to be considered in the light of the order passed by the Court (Coram: K. Sreedharan , CJ & A.R. Dave, J.) on 12/12/1998, which reads as under:

"In case any building fails to have these safety measures, all legal steps, contemplated by the various Acts and Rules, should be pressed into service, and effective action should be taken against erring builders / owners".

42. This Court is aware of the fact that AUDA is joined as party to this proceedings w.e.f. 25.7.2000 and the aforesaid order is passed on 12.12.1998. However, once having been joined as party to the proceedings, it is the duty of a public body to inquire as to what are the previous orders passed in the matter. Further more, there is a distinction between an individual and a public body; the later is a creature of statute and is expected to function in accordance with law and cannot plead ignorance of law. The Court has dealt with this aspect in paragraph 10 of the order dated 27.09.2000 passed in this matter. Moreover, in the instant matter, the requirement of law have been dealt with repeatedly in one after another orders. Even after such a situation, if a person, none other but the one sitting at the helm of a public body, states that "he is not sure what action could be taken", the same requires a serious consideration. If the Chairman has not taken action in accordance with law, it is clear that he has no respect for law. Obviously he has not acted in accordance with law and not followed the directions given by the Court. Earlier orders passed in this matter make it clear that the authorities are required to act in accordance with law and must discharge their duties in accordance with law.

43. In the case of V.M. KURIEN vs. STATE OF KERALA reported in (2001) 4 SCC 215, the Apex Court pointed out as under in paragraph 11 of the judgment: "Most surprising is that the requirement of having provision towards protection from fire hazards was also dispensed with. The minimum width of the staircase as required under Rule 21 (11)(b) also got dispensed with. This shows that the rules which are mandatory in nature are required to be complied with for construction of a high-rise building, were allowed to be dispensed with. Observance and compliance with the Rules is for public safety and convenience. There cannot be relaxation of the Rules which are mandatory in nature and cannot be

dispensed with especially in the case of a high-rise building. The position may be different in the case of one or two-storeyed building where there are minor deviations from the Rules, which do not affect the public safety and convenience. "

44. Thus it is very clear from the aforesaid judgment of the Apex Court the requirement of having provision towards protection from fire hazards cannot be dispensed with especially in case of a high-rise building. Thus, AMC and AUDA are duty bound to see that provision for protection from fire hazards for public safety and convenience are strictly complied with. In the aforesaid case, the Apex Court pointed out that exempting the provisions of the rules was contrary to the mandatory provisions of the Rules, and, therefore, not sustainable in law. AMC and AUDA, both were required to see that there is no compromise with public safety and convenience and rules, which are mandatory in nature and that they are strictly complied with. In the instant case, though their attention was drawn, they have neglected to carryout the provisions made in the Act and the Rules and have failed to disprove the allegations that they are in collusion with the builders.

45. It is stated that charity begins at home. Thus it is very clear that the State Government was responsible for not providing necessary facilities with regard to fire safety measures in its own buildings. Reading the affidavit of Dr. Manjula Subramaniam along with the annexures, it is very clear that in the year 1997 it was within the knowledge of the State that buildings are used without fire safety measures. Even after issuance of circulars, buildings are erected and have been occupied without fire safety measures. It appears to us that the State believes only in writing letters and issuing circulars and not in taking effective steps to see that its letters and circulars are implemented by the Governmental Departments itself.

46. Thus, the Government, AMC and AUDA, all the three were aware about the position. Our conclusion is that the State Government, AMC and AUDA were not keen to see that the provisions made in regard to fire safety measures are implemented. Only a show is made by enacting a law and provisions in the Act. A show is made so as to make the public at large to believe that the Government is interested in the public safety and had made all necessary provisions. The law has remained mostly in letters only, and not implemented in spirit. Thus, non-implementation of the provisions of law clearly

reveals the intentions. Law has remained only in the statute.

47. Chairman of AUDA has stated in his affidavit that AUDA has never encouraged people to occupy the premises in high rise buildings without occupancy certificate. Infact, AUDA has granted drainage connections to buildings without BU Permission. Is it not encouraging people to occupy such premises? It is further stated in paragraph 11 of the affidavit that people start occupying the lower floors while upper floors are yet under construction. In paragraph 12 it is stated that there is no provision to completely stop the usage of the premises. It is further stated in the affidavit that after the order dated 25.7.2000, AUDA has not granted any drainage connection to high rise building which does not have fire safety measures. No details are given as to how many buildings have not been occupied after 25.7.2000 though were fully constructed or how many buildings have been erected thereafter. The Chairman has further stated in paragraph 10 of the affidavit that while giving development permission, AUDA always prescribes a condition to install fire safety measures and to obtain certificate to that effect from Fire Brigade Department of AMC.. The Chairman also knows the provision for issuance of BU Permission because in paragraph 10 he has stated that AUDA has not given any BU Permission to any high rise building which did not install fire safety measures. Thus, it is known to the Chairman that there are provisions for BU Permission and fire safety measures in high rise buildings. However, for breach of these provisions what action has been taken is the real question. Mere conducting a survey of such buildings after the Court took cognizance of the matter and issued directions, is not the answer. It is prayed in the affidavit of Chairman of AUDA that since on more than three occasions officers of the AUDA has checked each and every high rise building and has prepared different reports of the installation of the fire safety measures, the Court may not take as negligence on the part of AUDA for non checking of high rise buildings for installation of fire safety measures. Checking and preparing reports regarding high rise buildings without fire safety measures is not the answer, but what action has been taken against the erring builders / developers so as to ensure compliance with the provisions, and prevent repetition of such instances, are the real issues. Merely conducting survey is not the remedy. However, nothing is coming forth with regard to this real issue.

48. In paragraph 8 of the affidavit of the Chairman,

AUDA dated 25.4.2001, it is stated that AUDA has "decided to install Fire Safety Measures in High Rise Buildings in accordance with Gujarat Regularization of Unauthorized Development Ordinance, 2000 and the Rules made thereunder". It is further stated that fire safety measures shall be installed in a phased manner and as early as practicable within 18 months in all the High Rise Buildings as required under the Ordinance of 2000. It is further stated that necessary funds of Rs.5 Crores for first phase has also been allocated for the aforesaid purpose. It is further stated that the expenses incurred by AUDA shall be recovered from the persons who are otherwise liable to install fire safety measures in their respective buildings. It is not clarified as to who are the persons responsible to install fire safety measures. We note that by allocating a large sum of Rs. 5 Crores from public funds AUDA intends to provide fire safety measures to the high rise buildings. We would not like to comment upon the Ordinance 2001 as we are told that the Ordinance is under challenge before the Court. But we would just say that this situation would not have arisen had AUDA taken due care and caution at all the relevant times. Public funds are sought to be utilized for providing fire safety measures. No details are placed in the affidavit, and certainly this is not an explanation as to why action should not be taken for allowing builders / developers to construct buildings without fire safety measures, and for allowing builders / developers to allow the use of the high rise buildings without BU Permission and for providing essential supplies without BU Permission. The real issues are sidetracked in the affidavit. The explanation, therefore, is not at all satisfactory.

49. On behalf of the State it is pointed out that AUDA is not exempted from its liability if there is any irregularity or breach and actions are required to be taken against the responsible officers. State has also pointed out that action should be taken against the erring persons for which the development authority is responsible. But no action has been taken.

50. So far as Municipal Corporation is concerned, it has drawn attention of the Court to the order made by the Court on 24.12.1997 which we have referred earlier. The deponent has stated that by June end, about 17 buildings will have fire safety measures adequately and effectively installed. No details thereof are given. From the chart placed at Annexure II, out of 418 buildings within the Corporation limit, only 30 buildings have been granted

NOC by the fire Bridge Department. 86 buildings have inadequate fire safety systems. 182 buildings are such where they have made inquiries and it was reported that orders have been placed with fabricators. However, no material has been placed before the Court to satisfy that what is represented by the Corporation is true. 20 buildings have not taken any initiative. 53 buildings are under construction, while in 5 buildings Corporation has agreed to provide fire safety measures and has taken the charges from them. Thus, it is clear that majority of the high rise buildings in the AMC limit have been permitted to come up and occupied without adequate fire safety measures. It is also required to be noted that all buildings within the limits of AMC and AUDA were not erected at a time but the buildings have been erected in different years. What the Chairmen and Commissioners at the relevant time did during their tenure to implement the law?

51. On behalf of the Commissioner lists of persons working in various Departments are placed to make the record bulky. A list dated 27.4.2001 containing 31 names of Engineers, Structural Designers and Clerks of Works whose licenses have been cancelled during 1992 to 2001 is produced. Another list containing names of 56 Engineers, Structural Designers and Architects whose licenses have been cancelled on 14.2.2001, 17.2.2001, 16.2.2001 and 19.2.2001 is produced. A list of action taken against subInspector, Asstt. T.D.O and Town Development Inspector is produced indicating action taken from 1985 to 2001. One case is of dismissal, two of deduction in pension upto five years (without dates) and two cases of stoppage of one increment. There is nothing to show as to why action was initiated. Whether persons suspended from 1985 to 1997 (6 in number) continue under suspension or the order of suspension is quashed or revoked, is not stated. On 28.9.2000, 27.2.2001 and 25.4.2001 in all 10 persons belonging to aforesaid category are suspended. Some of these persons were departmentally dealt with and some are being dealt with, however, for what breach is not stated specifically. This is a vague statement and to mislead the court such lists are produced. Whether those persons were responsible for allowing the builders to construct the buildings illegally or whether they have joined hands or how they are responsible, is not stated. AMC has produced a list of other persons working but with that nothing is pointed out as to how persons are responsible. It appears that Commissioner, by indicating that various persons are working in different department is trying to suggest that he is not responsible. It is required to be noted that under the BPMC Act, the

Commissioner is responsible. If powers are delegated, it was for him to check whether powers are exercised in accordance with law or not.

52. A bunch of list is produced along with the affidavit sworn on 6.12.2000 by P.S. Patel, Town Development Officer. According to that statement, out of 153 buildings, 9 have been occupied partly while 139 have been fully occupied. Notices have been issued under section 268 of the BPMC Act. However, if the list giving some vague information is perused, it becomes clear that since 1985 except issuance of notices, nothing has been done. The remarks column is blank against all the buildings. In cases of several buildings, even notices are not issued which is clear from the statement which runs into 15 pages. Against some of the persons who occupied some of the buildings, by issuing notices show has been made that actions are being taken. Silence about other buildings speaks a lot and nothing is required to be stated. Similar lists are tendered for 21 buildings.

53. To regulate promotion of the construction of, and the sale, management and transfer of flats on ownership basis and to provide for the ownership of an individual apartment and to make such apartment heritable and transferable, the legislature, after receiving the assent of the President, has enacted an act known as the Gujarat Ownership Flats Act, 1973 (hereafter referred to as the Flats Act). By Notification No. GH/J 14 (A)/73 FOB-1473-A(i) published on 1.8.1973, the Government of Gujarat appointed 1st August 1973 as the date on which the said Act came into force in the areas of Ahmedabad Municipal Corporation and other Municipal Corporations. Similarly, by Notification No. GH/I 15 of 83/FOB-1473/TH published on 16.6.1983 the Government of Gujarat appointed 16th May 1983 as the date on which the flats act came into force in the area of AUDA and other Urban Development Authorities.

Section 2 (a) defines 'flat' as under:

2.(a). "" "Flat" means a separate and self-contained set of premises forming part of a building and used or intended to be used for residence, or office, or show-room, or shop or godown or garage; and includes an apartment.

Explanation.- Each set of premises shall be deemed to be separate, and self contained that common provision is made for sanitary, washing, bathing or other conveniences in respect of two

or more sets of premises. ""

Section 2 (c) defines 'promoter' as under:-

2.(c). "" "promoter" means a person who constructs or causes to be constructed, a block or building of flats for the purpose of selling on ownership basis some or all of them to other persons, or to a company, co-operative society or other association of persons, and includes his assignees; and where the person who constructs or causes to be constructed and the person who sells are different persons, the term includes both."

So far as the liabilities of the promoter are concerned, section 3 provides for the same. Section (2)(i) reads as under:

(2). A promoter, who constructs or intends to construct such block or building of flats, shall

(i). not allow persons to enter into possession until a completion certificate, where such certificate is required to be given under any law, is duly given by the local authority (and no person shall take possession of a flat until such completion certificate has been duly given by the local authority). "

54. Over and above the aforesaid provision one will have to read section 263 of the BPMC Act for the area under the Municipal Corporation. Section 263 of the BPMC Act reads as under :

Section 263. Completion Certificates, permission to occupy for use:

(1). Every person shall, within one month after the completion of the erection of a building or the execution of any such work as is described in section 254, deliver or send or cause to be delivered or sent to the Commissioner at his office, notice in writing of such completion, accompanied by a certificate in the form prescribed in the bye-laws signed and subscribed in the manner so prescribed, and shall give to the Commissioner all necessary facilities for

the inspection of such building or of such work and shall apply for permission to occupy the building.

(2). No person shall occupy or permit to be occupied any such building, or use or permit to be used the building or part thereof affected by any work, until

(a). permission has been received from the Commissioner in this behalf, or,

(b). the Commissioner has failed for twentyone days after receipt of the notice of completion to intimate his refusal of the said permission."

55. Thus, in view of the aforesaid provisions, when breach is committed, it was the duty of the Chairman as well as the Commissioner to lodge the prosecution against the persons who have allowed others to occupy. Having not taken any action for breach of these provisions, the only conclusion that can be drawn is that against the violators, no actions are taken and innocent citizens are put to lot of inconvenience and harassment and are left to the mercy of the builders / developers etc. even with regard to public safety.

56. In our order dated 12/4/2001, we have also considered various other provisions which are reproduced herebelow:

"With regard to drainage also, there is provision in the Act not to provide drainage connection until the Commissioner grants permission. It was for the Corporation and the Urban Development Authority to provide essential services such as water and drainage connection only after satisfying itself that the building which is erected is as per the approved plans and not otherwise. Division Bench in Special Civil Application No. 8931/2000 and others considered the provisions with regard to essential services. The Court pointed out as under.

"If the law mandates that a building cannot be occupied without building use permission, it necessarily presupposes that it is the duty of the officers of the Corporation not to supply essential services such as drainage and water so as to see that the building is not used or

occupied. Sections 159 and 161 of the B.P.M.C. Act make it clear that without the permission of the Commissioner, owner or occupier is not entitled to cause his drain empty into the municipal drain. Violation of this provisions is an offence. Without building use permission, the facilities of drainage could not have been provided."

The fact that these two authorities freely provided essential services indicates that knowing full well that the buildings erected are not in accordance with plans as provided under the bye-laws, essential services were provided. We have considered this aspect in our earlier orders also and pointed out that the Commissioner cannot grant permission to occupy the building which is not erected in accordance with law and byelaws. In this background, it is required to be considered that despite the direction given by this Court on several occasions, neither the State of Gujarat, nor the Urban Development Authority nor the Municipal Commissioner have bothered to comply with the provisions contained in law and the directions given by this Court. So far as the State Government is concerned, an application was made to this Court seeking relief by way of extension of period on 25.8.2000 and by a detailed order, the Court has rejected the said application. Thus, when several directions were given, neither the State of Gujarat, nor the Chairman of AUDA nor the Commissioner of the Municipal Corporation have bothered to comply with the directions. It seems that in-between, on November 22, 2000, the government issued Ordinance No. 6/2000. The government was aware about the public welfare and the welfare of the State. The government was aware about the public safety and public health. While considering hardship, the government made certain provisions. Section 4 (2) of the said Ordinance reads as under.

"4(2): Unauthorised development may be regularised only if it is consistent with-

(a) any law (other than the relevant law) for the time being in force relating to control or regulation of development, and

(b). subject to the provisions of sub-sections (4) and (5), fire safety measures and structural stability under the relevant law."

Sub-Clauses (4) & (5) of Clause 4 are as under.

"4(4). Notwithstanding anything contained in clause (b) of subsection (2), the designated authority may direct making of provisions in the unauthorised development as follows, namely:

(a). In the case of buildings with 100 per cent built-up area with no space for water storage tank and installation of fire pumps and no provision of alternate means of escape or no provision for fixed fire-fighting installations, the designated authority may, in consultation with the Chief Fire Officer or the Municipal Corporation, direct the person to provide such fire safety measures as may be specified in the direction within a period of three months from the date of such direction.

(b). In the case of buildings where no space is available within the complex in which they are situate for the construction of underground water storage tanks and installation of fire pumps but adequate means of escapes are available, the designated authority may direct the person to provide common underground water storage tank and fire pumps in such complex at suitable location within a period of three months from the date of direction.

(c). In the case of high rise buildings having height of fifteen meters or exceeding fifteen meters, the designated authority may permit a person to install diesel generating set instead of electric supply to the main fire pump within a period of three months.

(5) Where a person fails to comply with directions given to him by the designated authority under clause (a), (b) or (c) of

sub-section (4), the designated authority shall install the required fire safety equipments and recover the costs thereof from the person as an arrear of land revenue."

The provisions pertaining to fire safety are mandatory, but in the case of high-rise buildings, if a person intending to use diesel generating set instead of electric pump to the main fire pump, then he may seek permission and the authority has to consider the request. We are told that till today, no application has been received so far in this behalf either by the AUDA or by the Corporation. That apart, after the Ordinance, the State Government has issued amendment to the existing rules which are known as Development Control Regulations with respect to Structural Safety. The government by notification earlier stayed the development permission in the earthquake zone. However, after the Committee which was consisting of experts appointed for specific purpose considered the situation and submitted its report and considering the report, the Sate Government in exercise of powers conferred under section 122 of the Gujarat Town Planning & Development Act, 1976 made further provision. The said provision provides for fire safety as well. With regard to inspection, Clause 5 of the said Regulations reads as under.

"5.INSPECTION

(1). Inspection at various stages:
The Competent Authority at any time during erection of a building or the execution of any work or development, make an inspection thereof without giving prior notice of his intention to do so.

(2). Inspection by Fire Department:For all multi-storied, high-rise and special building the work shall also be subject to inspection by the Chief Fire Officer, or Competent Authority shall issue the occupancy certificate only after clearance by the said Chief Fire Officer/Competent Authority.

Unsafe building:
All unsafe buildings shall be considered to constitute danger to public safety hygiene and

sanitation and shall be restored by repairs or demolished or dealt with as otherwise directed by the Competent Authority as prescribed in paragraph 13."

Clause 13 of the said Regulations pertains to structural safety and services which includes fire safety. It being relevant is also required to be referred here. The said clause 13 reads as under.

"13. STRUCTURAL SAFETY AND SERVICES

Structural Design:

The structural design of foundations, elements made of masonry, timber, plain concrete, reinforced concrete, pre-stressed concrete and structural steel shall conform to the provisions of part VI Structural Design Section -1 Loads, Section-2 Foundation, Section-3 Wood, Section - 4 Masonry, Section 5 Concrete, Section -6 Steel, National Building Code of India ...

(a) xxx xxx xxx xxx
(b) xxx xxx xxx xxx

(2) In pursuance of the above, a certificate as indicated in Form2(C) shall be submitted along with building plans/drawings and other building information schedule annexed thereto.

Quality Control Requirements

(i) The quality of all materials and workmanship shall conform to accepted standards and Indian Standard Specifications and Codes as included in Part V Building Materials and Plan VII Constructional Practices and Safety, National Building Code of India.

(ii) All borrow pits dug in the course of construction and repair of buildings, embankments etc. shall be deep and connected with each other in the formation of a drain directed towards the lowest level and properly stepped for discharge into the river, stream, channel or drain and no person shall create any isolated borrow pit which is likely to cause accumulation of water that may breed mosquitoes.

(iii) Alternative materials, method of design and construction and tests:

The provisions of the Regulations are not intended to prevent the use of any material or method of design of construction not specifically prescribed in them provided any such alternative has been approved. Nothing of the provisions of these Regulations is intended to prevent the adoption or architectural planning and layout conceived as an integrated development scheme. The Competent authority may approve any such alternative if it conforms to the provisions of the relevant parts of the National Building Code, regarding material, design and construction, and the material, method or work offered is, for the purpose intended, at least equivalent to that prescribed in these Regulations in quality, strength, compatibility, effectiveness, fire and water resistance, durability and safety. (iv) All buildings shall be constructed on a Quality Control Requirements. (v) In case of residential buildings on a plot area of not more than 500 sq. mt. in size and upto 3 storied construction, the responsibility to maintain Quality Control Requirements will be that of the Owner/Developer.

(4) Tests :-

Whenever there is insufficient evidence of compliance with the provisions of the Regulations or evidence that any material or method of design or construction does not conform to the requirements of the Regulations, in order to substantiate claims for alternative materials, design or methods of construction, the Competent Authority may require tests, sufficiently in advance, as proof of compliance. These tests shall be made by an approved agency at the expense of the owner as follows:-

(i). TEST METHODS:-

Test methods shall be as specified by the Regulations for the materials or design or construction in question. If there are no appropriate test methods specified in the Regulations, the Competent Authority shall determine the test procedure. For methods or tests for building materials, reference shall be made to the relevant Indian Standards as given in the National Building Code of India published by the Bureau of Indian Standards.

(ii). TEST RESULT TO BE PRESERVED:

Copies of the result of all such tests shall be

retained by the Competent Authority for not less than two years after the acceptance of the alternative material.

The testing of the materials as per Indian Standards shall be carried out by laboratories approved by the competent authority in this behalf.

The laboratory/agency shall work out in consultation with the construction agency a testing programme of materials such as cement, steel and quality of concrete including its mixing, laying and strength at site as well as in the laboratory.

This should cover various stages of construction from foundation to completion as per Regulation. The laboratory shall maintain a duly authenticated report in a bound register, copy of which will be submitted to the construction agency, which will in turn forward the testing report to the competent authority.

(5) STRUCTURAL STABILITY AND FIRE SAFETY OF EXISTING BUILDINGS:

(i). The Competent Authority on its own or otherwise may have the assessment of structural and/or fire safety of an existing building/structure damaged/undamaged carried out through expert(s) chosen from a panel of experts identified by the Competent Authority in this behalf, at the cost of the owner/developer/occupants of the building.

(ii). Competent Authority on advice of such expert(s) shall direct the owner/occupants of the building to carry out such repair/restoration and strengthening/retrofitting of the building found necessary so as to comply with the safety standards laid down in the National Building Code and the Indian Standards as specified.

(iii). The Competent Authority shall specify the period within which such compliance is to be carried out.

(iv). The Competent Authority may also direct the owner/developer/occupants, whether the building could be occupied or not

during the period of compliance."

Clause 14 of the said Regulations refers to fire protection requirements, which reads as under.

"14. FIRE PROTECTION REQUIREMENTS :-

(1) GENERAL:- The planning design and construction of any building shall be such as to ensure safety from fire. For this purpose, unless otherwise specified in these Regulations, the provisions of Part IV : Fire Protection Chapter, National Building Code, shall apply. For multi-storied, high-rise and special building, additional provisions relating to fire protection shall also apply. The approach to the building and open spaces on all sides upto 6 m. width and their layout shall conform to the requirements of the Chief Fire Officer. They shall be capable of taking weight of a fire engine weighing upto 18 tones. These open spaces shall be free of any obstruction and shall be motorable.

(2). TESTS:Every building meant for human occupancy shall be provided with exits sufficient to permit safe escape of its occupants in case of fire or other emergency for which the exits shall conform to the following.

(2). TYPES:- Exits should be horizontal or vertical. A horizontal exit may be a door-way a corridor, a passage-way to an internal or external stairway or to an adjoining building, a ramp, a verandah or a terrace which has access to the street or to the roof of a building. A vertical exit may be a staircase or a ramp, but not a lift.

(II). GENERAL REQUIREMENTS:- Exits from all the part of the building, except those not accessible for general public use, shall

(a). provide continuous egress to the exterior of the building or to an exterior open space leading to the street;

(b) be so arranged that, except in a residential building, they can be reached without having to cross another occupied unit;

(c). be free of obstruction;

(d). be adequately illuminated;

(e) be clearly visible with the routes reaching

them clearly marked and signs posted to guide any person to the floor concerned;

(f) be fitted if necessary, with fire fighting equipment suitably located but not as to obstruct the passage, clearly marked and with its location clearly indicated on both sides of the exit way;

(g). be fitted with a fire alarm device, if it is either a multi-storied, high-rise or a special building so as to ensure its prompt evacuation;

(h) remain unaffected b any alteration of any part of the building so far as their number, width, capacity and protection thereof is concerned;

(i). be so located that the travel distance on the floor does not exceed the following limits:

(i) Residential, educational institutional and hazardous occupancies: 22.5 m.

(ii). Assembly, business, mercantile, industrial and storage buildings: 30 m.

NOTE:- The travel distance to an exit from the dead end of a corridor shall not exceed half the distance specified above.

When more than one exit is required on a floor, the exists shall be as remote from each other as possible. Provided that for all multi-storied/high rise and special buildings, a minimum of two enclosed type staircases shall be provided, at least one of them opening directly to the exterior to an interior, open space or to any open place of safety."

Thus, it is very clear that the government is of definite view that the fire safety measures must be provided strictly in accordance with the rules and regulations and the National Building Code.

Actions are indicated to achieve public safety as per Constitution, laws or administrative policy. Action would therefore bear necessary integral connection between the purpose and object of public welfare and not personal gain.

So-called public policy cannot be camouflaged for abuse of the power and trust entrusted with public authority or public servant for performance of public duties.

In the instant case, despite the mandate of the legislature under the various Acts to see that

the buildings are permitted to be occupied only after the Building Use Permission is granted, these authorities, namely the AUDA and the Corporation have permitted with open eyes the use of buildings. Merely stating that the Building Use Permission is not granted by the authority is not an answer, because it is these authorities who have provided essential services. Despite the directions issued by the Court and making statement before the Court that they shall take all necessary steps, no action is taken. It is required to be noted that powers have been conferred on these authorities to look after the safety of the public at large and if there is violation, it cannot be tolerated. It is under these circumstances, we issue notice to the Chief Secretary, State of Gujarat, Municipal Commissioner, Ahmedabad Municipal Corporation and Chairman, AUDA to place explanation before this Court on oath for not carrying out the directions issued by the Court and not acting in accordance with the mandate of the legislature and the rules and regulations framed by the Corporation and the rules and regulations framed under the Gujarat Town Planning & Urban Development Act and the Rules thereunder.

While making order in Special Civil Application No. 9988/95, it was directed that the Municipal Commissioner shall not allow the use of the building if not constructed as per the plans approved and he shall see that if construction is not as per the plans approved, he shall take immediate action including the action of not granting Building Use Permission. Even after a specific direction was given, buildings are permitted to be occupied and used, only with the blessings of the authorities. The authorities did not issue Building Use Permission but without Building Use Permission, they permitted the facilities of essential services such as water and drainage connection. Water and drainage connections were given in contravention of all the provisions contained in the Act. The Commissioner has placed before us a note through some officer, who has not signed the same, conveying that from 24.10.97 to 31.7.2000 by taking nonrefundable fees, water and drainage connection are provided to the buildings which were illegally constructed. So far the commercial buildings are concerned, in 23

buildings, drainage connections are provided and in 266 buildings, water connections are provided. So far as the residential buildings are concerned, in 1166 buildings, drainage connections are provided and in 893 residential buildings, water connections are provided. Thus, to a large number of buildings, essential services are provided so as to facilitate the developers/builders/organizers who have erected the buildings illegally to allow the use of the same. If the buildings erected contrary to regulations were not provided with essential services, the builders/developers/organizers could not have handed over the possession of the buildings to the allottes. By stating that no Building Use Permission was granted, these officers have allowed occupancy by providing essential services which prima facie indicates that these officers acted in collusion with builders/developers/organisers. It is not a case of negligence simplicitor but of either connivance or collusion to play fraud with statute. The Commissioner, Ahmedabad Municipal Corporation, shall explain as to how these connections were given though buildings were erected illegally."

57. In the case of LUCKNOW DEVELOPMENT AUTHORITY vs..K. GUPTA reported in (1994) 1 SCC 243, the Apex Court observed in paragraph 8 (page 259) as under:

"' The theoretical concept that King can do no wrong has been abandoned in England itself and State is now held responsible for tortuous act of its servants. The First Law Commission constituted after coming into force of the Constitution on liability of the State in tort, observed that the old distinction between sovereign and non-sovereign functions should no longer be invoked to determine liability of the State. Friedmann observed:

"It is now increasingly necessary to abandon the lingering fiction of a legally indivisible State, and of a feudal conception of the Crown, and to substitute for it the principle of legal liability where the State, either directly or through incorporated public authorities, engages in activities of a commercial, industrial or managerial

character. The proper test is not an impracticable distinction between governmental and nongovernmental function, but the nature and form of activity in question.

xxxx xxxx xxx xxx xxxx

In any case the law has always maintained that the public authorities who are entrusted with statutory function cannot act negligently. As far back as 1878 the law was succinctly explained in Geddis v. Proprietors of Bann Reservoir thus:

"I take it, without citing cases, that it now thoroughly well established that no action will lie for doing that which the Legislature has authorised, if it be done without negligence, although it does occasion damage to anyone; but an action does lie for doing what the Legislature has authorised, if it be done negligently."

Under our Constitution sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the statute itself. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour before authorities created under the statute like the commission or the courts entrusted with responsibility of maintaining the rule of law. .. "'

In paragraph 10 (at page 262) the Apex Court observed thus:

"The jurisdiction and power of the courts to indemnify a citizen for injury suffered due to abuse of power by public authorities is founded as observed by Lord Hailsham in Cassell & Co. Ltd v. Broome on the principle that 'an award of exemplary damages can serve a useful purpose in vindicating the strength of law'. An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law. It acts as a check on arbitrary and

capricious exercise of power. In Rookes vs. Baranard it was observed by Lord Devlin 'the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service'. A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it." (emphasis supplied by us).

58. In the said judgment, the Apex Court examined the question that today the issue thus is not only of award of compensation but who should bear the burnt? The Court pointed out that when the Court directs payment of damages or compensation against the State the ultimate sufferer is the common man. It is the taxpayers money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law. The Apex Court also pointed out that in case amount is directed to pay from the public fund, the same should be recovered from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionary.

59. It is required to be noted that in the instant case, large number of occupiers were put in possession of the shops, residence and offices by the builder/developer without providing fire safety measures. The builder allowed the occupancy of the building on account of the sheer negligence of the executive or administrative authorities of the Ahmedabad Municipal Corporation and AUDA. Without the permission of the Corporation, building could not have been erected and without the supply of essential services, building could not have been occupied for use and therefore, when on account of willful omission or negligence or consent or connivance on the part of the officers of the Corporation and AUDA, if persons are put in possession by the builder/developer without the building use permission being granted, the injury which is caused to the persons would attract the provisions of public law. The Apex Court in the aforesaid case pointed out as under.

"Public law field, since its emergence, is ever expanding in operational dimension. Its expanse covers even contractual matters. Public law remedies have also been extended by the Supreme Court in realm of tort. In exercise of

> jurisdiction under Article 32 of the Constitution, this Court has awarded compensation to the petitioners who suffered personal injuries at the hands of the officers of the Government and the causing of injuries which amounted to tortuous act was compensated by the Court."

60. One has to consider the impact of constitutional provision. Fundamental right is placed beyond the reach of ordinary legislation inspired by motives. The right is enforceable against the State. The Apex Court in the case of M.C. Mehta vs. Union of India (1997) 3 SCC 715 pointed out the precautionary principle. With a view to protect the life of citizens, provisions of fire safety measures have been made compulsory and without the provisions no one can occupy the building where such safety is required to be provided. In this case, the Chairman and Commissioner, both despite the provisions made, have allowed the builders / developers / organizers to permit to occupy the buildings and to facilitate the builders / developers / organizers provided essential services, which under the Act /Rules / Regulations could not have been provided without building use permission. Not only that, but no action has been taken against the wrong doers and have not carried out the order passed by this Court.

61. The person engaged in erection of a building is required to erect the building in accordance with law and has to provide fire safety measures as pointed out in the regulations or bye-laws. As per the permission or deemed permission granted, he has to carry out construction strictly in accordance with law, but in any case, he cannot carry out construction by committing breach of building regulations. At the same time, it is the duty of the officers of the Corporation and AUDA to visit the site at all the stages and grant clearance for further erection of the building for further stages. It was the duty of the builder to make an application for building use permission and after such permission is granted, he could have given possession to the purchasers. It was the duty of the Corporation and AUDA not to supply essential services such as water and drainage without the building use permission granted by it. If law mandates that the building cannot be occupied without building use permission, it necessarily presupposes that it is the duty of the Municipal Commissioner and the Chairman of AUDA not to supply essential services such as drainage and water so as to see that the building is not used or occupied. Section 159 and section 161 of the BPMC Act

make it clear that without the permission of the Commissioner, owner or occupier is not entitled to cause his drain empty into the municipal drains. Violation of this provisions is an offence. Without BU Permission, the facilities of drainage could not have been provided. Thus, as stated earlier, the act of putting in possession of unauthorised construction and/or without fire safety measures, is in breach of public duty by both the public officers and the developer/builder. In view of the aforesaid decision, the Court moulds the relief by granting compensation. In proceedings under Art. 226 of the Constitution of India, it is the duty of the Court under the public law to penalise the wrong doers and to fix the liability for the public wrong on the State/Corporation which has failed to discharge public duty and to protect the citizens. On account of failure in discharge of the duties by the officers of the Corporation and AUDA, the persons were put in possession by the builder/developer. By allowing builders / developers to put others in occupation without fire safety measures, wrongful gain of approximately Rs.60 Crores are made by builders / developers, as pointed out by us hereinabove. In Municipal limits, by allowing unauthorised drainage, a loss of approximately Rs.6 Crores is caused to AMC as pointed out by us hereinabove.

62. In the instant case, it is clear that the public officers have either consented the act of erection of the building and occupation of the building or that act is on account of their connivance. Even if it is presumed that there was no consent or connivance, there is certainly omission on their part and this omission is willful; or at least there is negligence, nay, there is gross negligence. In a city where number of high-rise buildings have come into existence, would it not be noticed by the Commissioner and Chairman of AUDA? They were aware about the construction because the plans were before them. It is not their case that they were not aware about the erection of the building.

63. Is it not a case of fraud on statute by the persons interested? Why the persons were allowed to be put in possession without the building use permission being granted? Why essential services were provided by the Municipal Commissioner and Chairman of AUDA? The persons concerned did not bother to follow the provisions and obviously in view of such situation, it can be said that the persons interested joined hands and committed fraud and caused wrongful gain to one class and wrongful loss to the people at large. When builder made a representation about the erection of a building as per

plan and to provide fire safety measures as indicated in the plan, which he has, however not provided, what inference can be drawn in the facts and circumstances of the case?.

64. Officers of the Corporation and AUDA were armed with power coupled with the duty. Power to regulate the erection of building activities goes with the obligations and duties. Grant of permission takes within its sweep, in appropriate cases, to revoke or cancel permission as incidental or supplemental power to grant. Otherwise, power to regulate would be whittled down or even frustrated and with such wide powers given, if officers of the Corporation or AUDA are acting arbitrarily, they must be held liable. In the instant case, they have acted contrary to law by providing essential services without the building use permission being granted and without the fire safety measures.

65. In the case of DELHI DEVELOPMENT AUTHORITY V. SKIPPER CONSTRUCTION CO. (P) LTD. & ANOTHER [(1996) 4 SCC 622] the Apex Court has observed in para 37 as under.

> "37. Before parting with this case, we feel impelled to make a few observations. What happened in this case is illustrative of what is happening in our country on a fairly wide scale in diverse forms. Some Persons in the upper strata [which means the rich and the influential class of the society] have made the 'property career' the sole aim of their life. The means have become irrelevant - in a land where its greatest son born in this century said "means are more important than the ends". A sense of bravado prevails; everything can be managed; every authority and every institution can be managed. All it takes is to "tackle" or "manage" it in an appropriate manner. They have developed an utter disregard for law nay, a contempt for it; the feeling that law is meant for lesser mortals and not for them. The courts in the country have been trying to combat this trend, with some success as the recent events show. But how many matters can we handle. How many more of such matters are still there? The real question is how to swing the polity into action, a polity which has become indolent and soft in its vitals? Can the courts alone do it? Even so, to what extent, in the prevailing state of affairs? Not that we wish to launch upon a diatribe against anyone in particular but Judges of this Court are

> also permitted, we presume, to ask in anguish, "what have we made of our country in less than fifty years"? Where has the respect and regard for law gone? And who is responsible for it?"

66. In this matter, question of public accountability is involved. The Apex Court in the case of MAHESH CHANDRA vs. REGL. MANAGER, U.P.F.C. reported in (1993) 2 SCC 279 and in the case of LUCKNOW DEVELOPMENT AUTHORITY reported in (1994) 1 SCC 243 has pointed out this aspect.

67. The Apex Court has pointed out in DR. G.N. KHAJURIA vs. DELHI DEVELOPMENT AUTHORITY reported in (1995) 5 SCC 762 as under:

"10. Before parting, we have an observation to make. The same is that a feeling is gathering ground that where unauthorised constructions are demolished on the force of the order of the courts, the illegality is not taken care of fully inasmuch as the officers of the statutory body who had allowed the unauthorised construction to be made or make illegal allotments go scot free. This should not, however, have happened for two reasons. First, it is the illegal action/order of the officer which lies at the root of the unlawful act of the citizen concerned, because of which the officer is more to be blamed than the recipient of the illegal benefit. It is thus imperative, according to us, that while undoing the mischief which would require the demolition of the unauthorised construction, the delinquent officer has also to be punished in accordance with law. This however, seldom happens. Secondly, to take care of the injustice completely, the officer who had misused his power has also to be properly punished. Otherwise, what happens is that the officer, who made the hay when the sun shined, retains the hay, which tempts others to do the same. This really gives fillip to the commission of tainted acts, whereas the aim should be opposite." (emphasis supplied by us).

68. The Court has pointed out on several occasions that there should be accountability and liability of public servants in administrative matters, and there should be transparency in all what they do. The Apex Court in the case of COMMON CAUSE vs. UNION OF INDIA reported in (1999) 6 SCC 667 has pointed out (see Head Note "O") that Executive or administrative actions of State or its instrumentalities or statutory or public bodies which are in violation of fundamental rights or which are arbitrary or oppressive in violation of Art.

14 or any statute are open to judicial review.

69. In the result, having considered all the pros and cons of this matter and having heard the learned advocates in detail on various occasions, we intend to dispose of this petition by making the following interim directions absolute:

(1). In all high rise buildings, fire safety measures are to be provided keeping in mind the provisions made in BMPC Act, Gujarat Town Planning & Urban Development Act and specific provision for fire protection systems in the byelaws under Chapter III of the General Building Requirements and National Building Code as well as other provisions which may be applicable.

(2). So far as the existing but unoccupied buildings and/or the buildings under construction are concerned, Ahmedabad Municipal Corporation and AUDA are directed that they shall not grant NOC or Building Use Permission unless and until sufficient fire protective system is installed and made operational by them. These authorities shall strictly enforce the provisions relating to fire protective system before granting occupation certificate.

(3). It is further directed that henceforth AMC or AUDA shall not supply essential services to any new building unless and until the building is erected in accordance with law and BU Permission is granted by the competent authority.

(4). Ahmedabad Electricity Company shall not supply electric connections to any building unless BU Permission issued by the AMC and/or AUDA as the case may be is produced before it. If the builder / developer is found indulging in malpractice of supplying electricity for residential use from the connection given to the builder / developer for construction purpose and thereby permit illegal occupation, such connections shall be disconnected and legal action as permissible under the relevant law shall be initiated against such builders / developers.

(5). So far as the existing and occupied buildings are concerned, the Court has already given directions in this regard in its earlier order dated 25.07.2000 and the authorities are directed to follow that directions.

(6). AMC and AUDA shall carry out periodical as well as surprise checkings of the fire safety systems provided

in high rise buildings, and if the same are not found operational or in working order or if the builders / developers / owners / occupiers have made only a show of providing fire safety measures, they shall be called upon to set right the system at the earliest possible but not later than 21 days, and on failure to set right the fire safety systems, essential supplies to such buildings such as drainage, water, electricity etc. shall be disconnected.

(7). Regarding Cinema Halls, the concerned respondent authorities shall continue to monitor cinema halls and no renewal of license shall be granted unless adequate protective measures have been provided by them and the same are operational and in working condition. The officers of the Corporation shall inspect, verify and test the fire safety measures at such intervals, in consultation with the head of Fire Brigade Department and shall make a note in the inspection-register or diary to be maintained in each cinema hall. Over and above this, there should be surprise checking also. If the safety measures are inadequate or not functioning, the concerned respondent authorities shall take immediate action including suspension of license and closure of the cinema halls till the systems are made fully operational.

(8). So far as Factories are concerned, the concerned respondent authorities shall keep in mind section 38 of the Factories Act, 1948 read with Rule 66.A of the Gujarat Factories Rules, 1963 and other relevant provisions and shall insist on compliance with those provisions.

(9) The State is directed to install adequate fire safety measures in the Government high-rise buildings. In its order dated 7.8.2000, the Court has recorded the assurance given by then Additional Advocate General to the effect that without constraint of time and finance, fire safety measures shall be provided. State to report within 21 days about the fire safety measures in its buildings.

(10). The State, AMC and AUDA shall initiate disciplinary proceedings against its employees / servants / officers if it is found that (i). due to their dereliction of duties fire safety measures are not provided in high-rise buildings, and (ii). essential supplies are provided to buildings without adequate fire safety measures.

(11). Before issuance of Building Use Permission, the

Commissioner or the Chairman of AUDA, as the case may be, shall record satisfaction about the fire safety measures provided as per the requirement and its operation, and shall not permit anyone to occupy the buildings till such satisfaction is recorded and BU Permission is issued.

70. Before parting with, the Court appreciates the services rendered by Dr. Manjula Subramaniam in conducting an inquiry and submitting a report to the Court in this matter.

71. This is an eye opener to all concerned, as the Executive wing of the Municipal Corporation as well as AUDA have intentionally neglected and or omitted to discharge their duties with a view to benefit a class. On the other hand, hardship has been caused to several innocent persons occupying buildings. The Chairman of AUDA as well as Commissioner of the Ahmedabad Municipal Corporation have not cared to carry out the directions issued by the Court, which have been confirmed by the Apex Court. Different Benches of this Court, apart from other short orders, have passed many lengthy interim orders in this matter, one running into 24 pages (order dated 12/4/2001), another into 16 pages (order dated 13/11/2000), another into 8 pages (order dated 4/10/2000), another into 10 pages (order dated 27/9/2000), another running into 13 pages (order dated 25/07/2000) and yet another running into 8 pages (order dated 17/02/2000). It may be noted that the reference to earlier orders is only with a view to high light inaction, negligence and willful omission of these officers.

72. We have gone through the entire records of this case several times, have heard the learned advocates appearing for the parties on numerous occasions and have minutely examined the affidavits filed by then the Chief Secretary (Shri L.N.S. Mukundan), the Chairman of AUDA (Shri Surendrabhai M. Patel) and Municipal Commissioner (Shri K. Kailasnathan).

73. To summarize,
(I) On 24.12.1997, a Division Bench (Coram: K. Sreedharan CJ & MS Shah, J) directed to take appropriate steps to get fire safety and fire protection measures including installation of such equipments in high-rise buildings.
(II) Though direction was given on 12.2.1998 by the Division Bench (Coram: K Sreedharan CJ & A.R. Dave, J.) to follow the time schedule and to see that fire safety measures are installed, the Commissioner has neither

carried out that direction nor has prevented the use of buildings constructed thereafter wherein no fire safety measures are provided, nor has taken legal steps though directed.

(III) On 18.2.1999, the State Govt. forwarded circulars to all Municipalities, Municipal Corporations and Development Authorities in this behalf; yet, no action has been taken.

(IV) Thereafter, again a Division Bench (Coram: C.K. Thakkar & K.M. Mehta, JJ) directed AMC and AUDA on 17.2.2000 but neither AMC nor AUDA carried out the directions in its true letter and spirit. Despite the public notice, no action was taken, either by AUDA or by AMC, and hence the Division Bench on 17.2.2000 issued the directions.

(V) As the directions given earlier were not complied with, considering the record that these authorities though directed on aforesaid dates have not bothered for public safety, the Division Bench on 25.07.2000 issued further directions including disconnection of essential services and electric supply on failure to provide fire safety measures after four weeks of public notice.

(VI) Despite report submitted on 4.11.2000 by Dr Manjula Subramaniam, Principal Secretary, AUDA has not taken action as it ought to have taken. The Court has perused the report submitted by Dr. Manjula Subramaniam, it is clear that the present Chairman knowing full well that actions were required to be taken for not providing fire safety measures has remained negligent in discharging his duties. The Chairman was the person granting BU Permission for high rise buildings, but he has not taken any steps to provide fire safety measures though in plan of each high rise building specific reference has been made.

(VII) Again Court issued notice on 12.4.2001; yet we have to say that though law mandates and court directed to take action against wrong doers, no steps have been taken. The only conclusion that can be drawn is that these authorities, viz. Commissioner and Chairman AUDA did not take any action against builders, developers etc. only with a view to shield them. It could be only due to collusion.

(VIII) Public Exchequer has suffered a loss. The public at large are without fire safety measures. The loss suffered is referred in paragraphs 20 and 23. The loss comes to approximately Rs.66 Crores. Thus, the total loss suffered by the people is very large.

(IX) It is clear from the record that AUDA by charging amount contrary to law and the decision of the Apex Court which we have referred, and so far as Commissioner is concerned, despite the injunction issued by the Division

Bench in case of CONSUMER PROTECTION COUNCIL vs AMC (SCA 6794/92) wherein the Court held that the Commissioner had no authority to regularize unauthorized construction by charging amount. In the absence of any provisions, both the authorities, with open eyes, without fire safety measures in high rise buildings, have permitted occupancy.

Despite the mandate of law and the directions issued by the Court, instead of correcting themselves, the Chairman of AUDA acted high handedly when he was called upon by the Court to render an explanation in one matter, disconnected essential services to several buildings at a time. He ought to have realized that he was not directed by the Court to act in an uncivilized manner. We make it clear that neither the Chairman AUDA nor the Municipal Corporation shall put the citizens in difficulties and shall comply with the order. By creating a situation which would cause harassment to the public at large, viz. occupiers of various high rise buildings, the authorities will not purge themselves of the offence which they seem to have committed prima-facie.

74. We are prima facie of the opinion that Chairman of AUDA and Municipal Commissioner have failed in complying with the various interim directions given by this Court. We therefore direct the Registry to issue notice against these officers, returnable on 23rd July 2001, under the Contempt of Courts Act and under Article 215 of the Constitution of India as to why action should not be taken against them and as to why they should not be held liable for the amount required for installation of fire safety measures in high rise buildings and why Commissioner should not be held liable for the loss suffered by the Corporation for permitting the builder/ developer/ organizer / occupier for use of municipal drains without making payment. The Registry shall list this matter before the appropriate Bench along with the entire record of this case.

75. This petition stands allowed accordingly. Rule made absolute accordingly, with no order as to costs.

Sd/
(B.C. PATEL, J.)

Sd/
csm./ (D.A. MEHTA, J.)